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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,990	06/30/2003	Earl Harling	NIDN-73132	6720

22840 7590 10/10/2006

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EXAMINER

LOPEZ, AMADEUS SEBASTIAN

ART UNIT	PAPER NUMBER
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3771

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/009,990	Applicant(s) HARLING ET AL.	
	Examiner Amadeus S. Lopez	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 9-11 is/are allowed.
- 6) ☒ Claim(s) 1-5, 8 and 12-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see page 7 of 9, filed 7/12/2006, with respect to the objection to the spelling of the word "foetus" have been fully considered and are persuasive. The objection has been withdrawn.
2. Applicant's arguments, see page 8 of 9, filed 7/12/2006 with respect to the objection to the Oath/Declaration have been fully considered and are persuasive. The objection has been withdrawn.
3. Upon an updated search, the examiner has discovered prior art and has regretfully withdrawn the previous indication of allowability of claims 7-8, 10-15, and 18.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

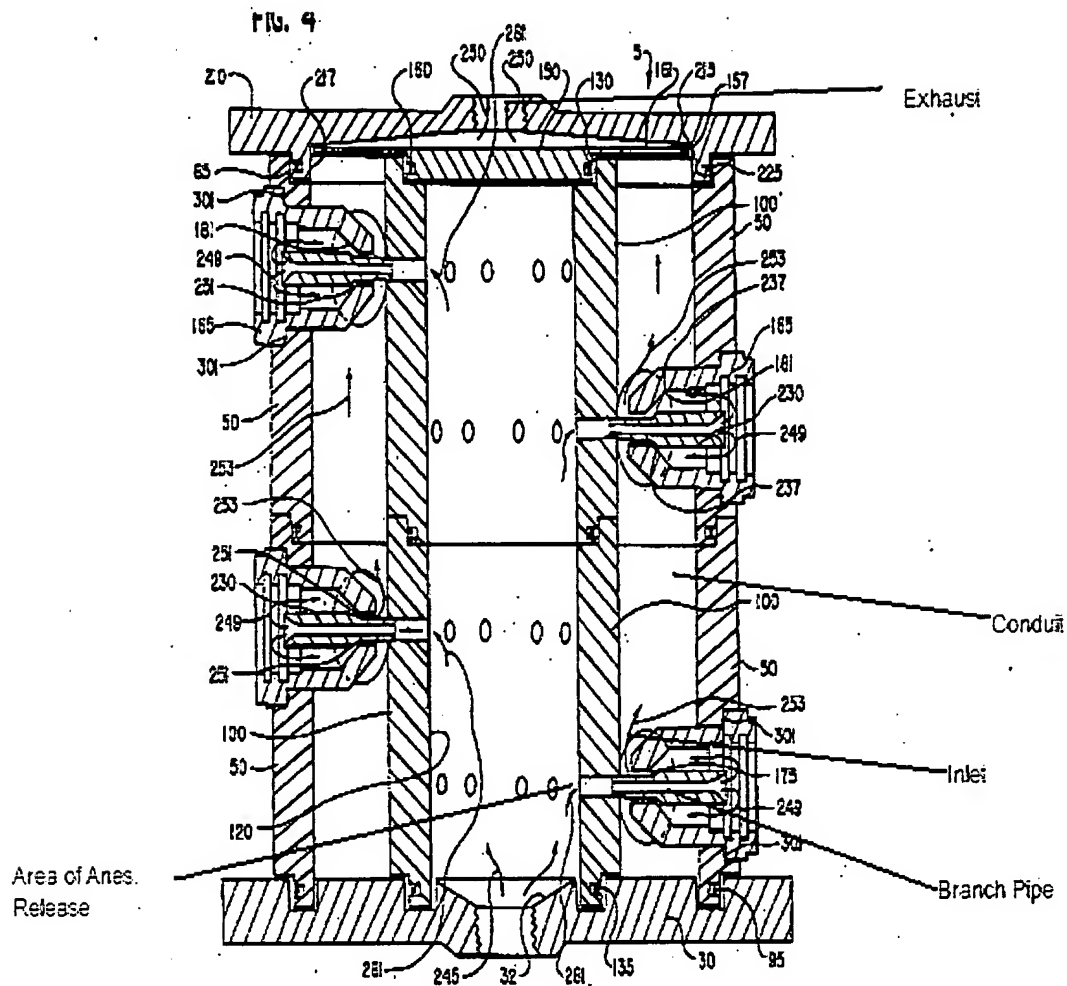
The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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4. Claims 1-3, 5, 8, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5297502 to Jaeger.

1. **With regards to claims 1, 16, and 17** what is taught and shown by Jaeger in figs. 1 and 4 is a ventilation system for reducing the amount of anaesthetic released from an anaesthetic administration station into a small animal surgery suite, the system comprising at least one inlet (labeled in figure 4 below) positioned adjacent to at least one area of anaesthetic release (See figure 4 below) from the anaesthetic administration station (10), and a conduit leading from the inlet to an exhaust (both conduit and exhaust labeled in figure 4 below), said anesthetic administration station is an induction chamber (10; Fig. 1), where animals are initially anesthetized and wherein the inlet is provided on the side of the induction chamber. What is not disclosed by Jaeger is that the inlet is located above the induction chamber. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the inlet above the induction chamber, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. Since Jaeger teaches all the elements and the claimed configuration of the ventilation system, the method of installing this system for reducing the amount of anaesthetic released from an anaesthetic administration station would have been obvious through the set up and use of the ventilation system of Jaeger.



2. **With regards to claim 2**, what is taught and shown is a ventilation system wherein the system comprises a plurality of areas of anesthetic release an inlet adjacent to each area (See figures 1 and 4 above; wherein it is shown that each induction chamber has an inlet and area of anesthetic release associated with it).
3. **With regards to claim 3**, what is taught and shown by Jaeger in figures 1 and 4 is a ventilation system wherein said conduit comprises a main pipe (located as conduit in fig 4 above) connected at one end to the exhaust (gases are removed from the induction chamber via the conduit that leads to the exhaust outlet 214; Col. 11, line 67 to Col. 12, line 10).

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4. **With regards to claim 5**, what is taught and shown by Jaeger in figures 1 and 4 is a ventilation system further comprising means for entraining air in the form of a fan disposed in the region of said exhaust (Col. 11, line 67 to Col. 12, line 10).

5. **With regards to claim 8**, what is taught and shown by Jaeger in figures 1 and 4 is a ventilation system with all the limitations of claim 6 with the exception of wherein the inlet is in the form of an inverted funnel connected to the conduit. It would have been an obvious matter of design choice to have the inlet in the form of an inverted funnel, since such a modification would have involved a mere change in the size and shape of a component. A change in shape or size is generally recognized as being within the level of ordinary skill in the art. Further the applicant has not disclosed that an inverted funnel inlet solves any stated problem or is of any particular purpose and it appears that the invention would perform equally well with the inlet disclosed by Jaeger.

6. **Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5297502 to Jaeger as applied to claim 4 above, and further in view of US Patent No. 5626130 to Vincent.**

7. **With regards to claim 4**, what is taught and shown by Jaeger in figures 1 and 4 is a ventilation system with all the limitations of claim 4 with the exception of wherein each branch pipe includes a valve for regulating flow in said branch pipe. In figure 1 Vincent shows valves designated by 24 attached to each branch pipe or conduit (20 and 22) to regulate the flow of gas through each pipe. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ventilation

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system of Jaeger to utilize valves as taught by Vincent to regulate the flow of anesthetic to the small animals within the induction chambers. In this way, anesthetic can be selectively released to a particular animal subject within a specific induction chamber without having to apply anesthetic to another animal in another induction chamber.

8. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5297502 to Jaeger in view of US Patent No. 4332244.

9. With regards to claim 12, what is taught and shown by Jaeger in figures 1 and 4 is a ventilation system with all the limitations of claim 12 with exception of wherein the anaesthetic administration station comprises at least one breathing station where surgery is carried out on an the animal. What Levy et al teach is a breathing station set up that would allow surgery to be carried out on the animal while it is being anesthetized. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the induction chamber of Jaeger to have an open end at which the body of the animal would be easily accessible so that surgery may be performed on it while it is being anesthetized.

10. With regards to claim 13, what is taught and shown by Jaeger in figures 1 and 4 is a ventilation system with all the limitations of claim 13 with the exception of wherein the at least one breathing station includes an orifice for insertion of an animal's nose, the inlet being provided next to the orifice. What Levy et al discloses is a breathing station set up that includes an orifice (conical mask) for insertion of an animal's nose (abstract), the inlet (20) being provided next to the orifice. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify

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the ventilation system of Jaeger to include a breathing station that includes an orifice for insertion of an animal's nose, the inlet being provided next to the orifice so that anesthetic can be administered directly into the nasal passage of the animal so anesthetic is not wasted. Further it would have been obvious to one having ordinary skill in the art to have the inlet being provided next to the orifice so that any anesthetic that is not administered to the animal is immediately entrained through the inlet so that anesthetic is not wasted.

With regards to claim 14, what is taught and shown by Jaeger in figures 1 and 4 is a ventilation system with all the limitations of claim 14 with the exception of wherein the inlet is defined at an end of a length of tubing. It would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to have the inlet defined at an end of a length of tubing, since the applicant has not disclosed that having the inlet defined in such a way solves any stated problem or is of any particular purpose and it appears that the invention would perform equally well with the inlet of the system of Jaeger.

11. **With regards to claim 15**, what is taught and shown by Jaeger et al in figs 1 and 4 is a ventilation system wherein the inlet is formed as an annulus surrounding the orifice (See figure 4 above wherein the inlet is shown to surround the area where the anesthetic is delivered to the animal).

Allowable Subject Matter

12. Claims 9-11 are allowed.

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Conclusion

13. The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. US 4860741, US 4787382, US 5379777, US 4917046, US 5899846, US 4582055, US 4520808, and US 5099792.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amadeus S. Lopez whose telephone number is (571) 272-7937. The examiner can normally be reached on Mon-Fri 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Amadeus S. Lopez
Examiner
Art Unit 3743
September 29, 2006


TEENA K. MITCHELL
PRIMARY EXAMINER

ASL